

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MARGUERITE CARRUBBA

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1238

**HARRISON COUNTY, MISSISSIPPI BY AND
THROUGH ITS BOARD OF SUPERVISORS;
HARRISON COUNTY SHERIFF GEORGE PAYNE;
WAYNE PAYNE; DIANE GATSON RILEY;
STEVE CAMPBELL; RICK GATSON; RYAN TEEL;
KARLE STOLZE, WILLIAMS PRIEST, JAMES A.
GONDLES, JR. AMERICAN CORRECTIONAL
ASSOCIATION; JOHN AND JANE DOES 1-3;
HEALTH ASSURANCE LLC AND J. L. WHITE**

DEFENDANTS

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL

COMES NOW, Defendant George Payne, Jr., in his official capacity by and through his attorneys of record, Dukes, Dukes, Keating & Faneca, P.A. and files this his Response to Plaintiff's Motion to Compel investigative notebook, the individual investigation file, the audio recording of statements taken by Steve Campbell, and transcriptions of audio recordings requested through discovery, and would show unto this Court as follows:

I. _____ Plaintiff's assertion that she first learned, on October 1, 2009, of the existence of IA investigative files, Steve Campbell's investigation notebook, and audio recordings made by Steve Campbell during his investigations is incorrect and misleading.

A copy of the inventory made of the United States Department of Justice materials returned to counsel for the Harrison County Adult Detention Center is attached hereto as **Exhibit "A"**. The check marks shown to the left on Exhibit "A" were made by Plaintiff's counsel indicating those documents and videos/audio recordings that he wished to have

produced by the Defendant.

Boxes 119, 165, 195, 196 and 197 are clearly marked on Exhibit "A" as IAD investigative reports. Plaintiff's counsel selected and tabbed documents to be produced from these five boxes and these boxes contain only IAD investigative files. See Exhibit "A".

Steve Campbell's IA investigation notebook was stored flat on top of the files located in one of these five boxes. See Affidavit of Trish Misko attached hereto as **Exhibit "B"**. Plaintiff's counsel would have had to remove Steve Campbell's notebook and set it aside before searching through the IA files located in that particular box.

Exhibit "A" also indicates that Plaintiff's counsel marked Box # 200, which contained miscellaneous audio recordings. Plaintiff's counsel did not request copies of any recordings from Box# 200.

II. The only existing document, file, or audio/video recording sought by the Plaintiff is Steve Campbell's notebook containing an index of IA investigations performed from 2003 to 2007.

In her Motion to Compel, Plaintiff seeks production of a). Steve Campbell's investigative notebook, b). the individual investigative file for Plaintiff, and; c). audio recordings of statements Steve Campbell took during his investigation and the transcripts of said audio recordings.

Defendant responds to each of these requests as follows:

- a). Steve Campbell's investigative notebook containing a listing of IA investigations from 2003 to 2007.

This notebook is a journal notebook which lists (in Steve Campbell's handwriting) a chronological list or index of Internal Affairs investigations/reports performed for the

calendar years 2003 to 2007. There are no details or information of any investigation in this notebook, just a single line with the date and names of individuals involved for each investigation. Despite Plaintiff's previous failure to request and/or recognize this notebook, a copy of this notebook will be produced to Plaintiff and thus Plaintiff's request is moot.

b). Internal Affairs investigation file for Carrubba.

There is no Internal Affairs investigative file for Plaintiff Carrubba. If there had been a formal investigation/report it would have been listed in Steve Campbell's notebook and an investigative file for the Plaintiff would have been located in one of the five IA investigation boxes referenced above. Also, in addition to the lack of a listing for an IA report regarding Plaintiff Carrubba's complaint in Steve Campbell's notebook, Harrison County Adult Detention Center personnel searched these IA boxes again for any investigative file or material regarding the Plaintiff and were unable to locate any such file or information. See Affidavit of Nadine Ferrell attached hereto as **Exhibit "C"**.

c). Audio recordings/transcripts of audio recordings.

As there is no investigative file for Plaintiff, there is likewise no audio recording or transcript to be found regarding the Plaintiff. As noted above, Plaintiff's counsel checked Box #200 containing miscellaneous audio tapes as materials he wanted to review. Plaintiff's counsel did not select any items from Box #200 to be copied and produced by the Defendant. Harrison County Sheriff's Department employee, Nadine Ferrell also recently searched through Box #200 in an attempt to locate any audio recording that related to the Plaintiff and did not find any. See Exhibit "C".

Although there was no formal internal report issued regarding Plaintiff's booking on June 17, 2006, Defendant has produced to the Plaintiff, during the discovery process, 187

documents and video/audio recordings. 46 of the 187 documents/videos are identified as IA Reports. See list of items produced attached hereto as **Exhibit "D"**.

WHEREFORE, PREMISES CONSIDERED, Defendant agrees to produce a copy of Steve Campbell's notebook containing the index of IA investigations for the period of 2003 to 2007 and hereby moves this Court to deny Plaintiff's remaining requests to compel documents.

RESPECTFULLY SUBMITTED, this the 14th day of October, 2009.

GEORGE PAYNE, JR., Defendant

BY: DUKES, DUKES, KEATING & FANCA, P.A.

BY: /s/ Cy Faneca
Cy Faneca, MSB #5128

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CERTIFICATE OF SERVICE

I, CY FANECA, do hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Robert Harenski
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This, the 14th day of October, 2009.

s/Cy Faneca
CY FANECA